



Standard Operating Procedure

SOP13

Sub-Branch Incorporation

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1. Purpose

This Standard Operating Procedure (SOP) provides sub-Branches with guidelines for the Incorporation of a sub-Branch as a Company Limited by Guarantee (**CLG**) under the Corporations Act 2001 (Cth).

Unless otherwise stated, capitalised terms used in this SOP have the meaning set out in Appendix A of the Constitution. For ease of reference, sub-Branch Property is defined in the Constitution as all real and personal property, income, assets such as shares, money, and funds of a sub-Branch. Leases and other contracts (for example: loan agreements, securities, and mortgages) will also need to be transferred.

In this SOP, a reference to “Member” means a member of RSL NSW attached to the sub-Branch.

An incorporation check list to support the information set out below and assist the sub-Branch Executive and Trustees is annexed (see Annexure A).

2. Explanatory Notes

This SOP is to be read in conjunction with relevant references, and definitions. Where there is doubt or inconsistency, the hierarchy of documentation is in accordance with the RSL NSW Written Directions Framework Policy.

3. Incorporation and Transfer of Property

When a sub-Branch is incorporated, all sub-Branch Property and its Charter must be transferred upon or, immediately following, Incorporation. A sample checklist of property and assets that may be transferred and the actions that must be taken to achieve the transfer is set out at Annexure B.

The name of the Incorporated entity must be **[insert name RSL sub-Branch] Limited**.

The Constitution that will be adopted by the sub-Branch for the purpose of Incorporation will be the CLG Model Constitution approved by the RSL NSW Board from time to time (**Model Constitution**).

4. What is required to be done?

4.1. In Principle Member Approval

Prior to commencing the Incorporation process, the sub-Branch Executive and Trustees are to obtain in principle approval from Members. Commencing the Incorporation process means ascertaining the assets of the sub-Branch and obtaining the necessary accounting and legal advice associated with Incorporation (see paragraph 3.2.1 below). A sample notice of meeting and minute evidencing in principle member approval can be found in the sample notices and minutes annexed at Annexure C.

In principle approval is obtained by a majority resolution passed by Members present and entitled to vote at a general meeting, convened in accordance with the RSL NSW Constitution. The notice of meeting is to list the Incorporation of the sub-Branch as a specific item of business and give Members all necessary information that may be required to enable them to make an informed decision in relation to the Incorporation.

4.2. Notify ANZAC House

Once in principle approval is obtained from the Members, the sub-Branch must notify Anzac House to advise that they have commenced Incorporation planning. The notification is to be sent to support@rslnsw.org.au and is to include:

- (a) a copy of the minutes of the meeting of the sub-Branch at which the majority resolution is passed;
- (b) the details of the sub-Branch solicitor conducting the Incorporation;
- (c) the details of the sub-Branch accountant assisting with the Incorporation; and
- (d) the details of the valuer that will conduct a valuation should the sub-Branch hold real property assets.

RSL NSW will acknowledge receipt of the notification and will either:

- (a) confirm that the pre-incorporation phase is complete; or
- (b) request further information if all required information has not been provided.

Obtaining in principle approval to incorporate is only the first step in the process. Once the Sub-Branch and Executive have obtained the necessary legal and financial advice and have considered the alternatives to Incorporation and the cost of Incorporation (Incorporation Factors), further approval from Members will need to be obtained in accordance with paragraph 4.3 below.

4.3. Investigation and Enquiries

4.3.1 Professional Advisors

Once in principle approval has been obtained from Members, the sub-Branch Executive may commence making enquiries to obtain advice from investment advisors, accountants, and lawyers (Advisors) about the steps particular to the sub-Branch which would need to occur to achieve incorporation. Some of the items for consideration include:

- Novation of leases and agreements
- Winding up of trusts
- Assignment of contracts (where novation is not appropriate)
- Share transfers
- Real Property transfers
- Transfers of fundraising licenses to the new entity
- Bank account transfers
- Mortgage and securities transfers
- Notifications to regulators namely the ACNC, Fair Trading and ASIC.

It is imperative that the sub-Branch is supported by professional advisors through this process to ensure that chain of title and that the transfer of ownership of charitable assets is clear. Further guidance is available in the checklist annexed to this SOP at Annexure B.

ANZAC House can assist with recommendations for sub-Branch professional advisors such as solicitors or accountants should a sub-Branch need such assistance.

4.3.2 Valuations

Any Real Property transfer from the Trustees to the CLG entity must be supported by a current market valuation conducted by a registered valuer.

4.3.3 Costs of Incorporation

Sub-Branches with real property assets in their trusts are to seek an exemption from duty on the transfer of such land, buildings and structures in accordance with the *RSL NSW Act, 2018 (Amendment 6 June 2022.)*

A schedule of other costs associated with Incorporation should be prepared and considered by Members in the general meeting conducted with paragraph 4.4 below.

4.4. Member Approval of Incorporation

Member approval for the sub-Branch to incorporate must be obtained by a majority resolution passed by Members present and entitled to vote at a general meeting convened in accordance with the RSL NSW Constitution. The notice of meeting is to list the Incorporation of the Sub-Branch as a specific item of business, and is to include:

- (a) a copy of any advice received from Advisors outlining the details of the proposed Incorporation and the steps to be taken to incorporate and is to list any costs involved;
- (b) an assessment of the **benefits and detriments** of Incorporation;
- (c) any other relevant information that may assist Members to make an informed decision; and
- (d) a confirmation of those members of the sub-Branch Executive willing to be appointed Directors.

A sample notice of meeting and associated minute evidencing member approval of Incorporation can be found in Annexure C.

4.5. Election of Directors

Directors will be appointed in accordance with Clause 10.4 of the Model Constitution. A Director will hold office for as long as they remain on the sub-Branch Executive for the purposes of the RSL NSW Constitution. That is, they could be a 'president director,' just as the State President is a state president director of RSL NSW, and so on for treasurer, secretary etc.

4.6. Board Approval for Incorporation

Once the members approve the proposed Incorporation at the members' meeting, held in accordance with item 4.4 above, and the transfer of the Property, if any, and seek the transfer of the Charter to the incorporated entity, the sub-Branch must seek the approval of the Board prior to entering into any obligation (including entering into any agreement, making or accepting an offer, or paying any money or agreeing on terms and conditions for the incorporation) with any party in relation to the incorporation. To obtain Board approval, the Sub-Branch must submit a written request to ANZAC House by sending an email to support@rslnsw.org.au and is to include:

- (a) a copy of the notice of meeting and associated minutes of the meeting passing the resolution;
- (b) a copy of the report of the Executive recommending the incorporation of the sub-Branch;
- (c) any independent advice, or reports obtained including any cost estimates and market valuations relied upon by the sub- Branch; and
- (d) confirmation of those members of the sub-Branch Executive willing to be appointed Directors.

4.7. Incorporation

Once written notification of Board approval is obtained for the Incorporation, the Sub-Branch may instruct their professional advisers to proceed with Incorporation in accordance with clause 15.26 and 15.28 of the Constitution. If Board Approval is not obtained, the transaction may not progress. The Board will not unreasonably withhold its approval.

Once Incorporation has been completed, the sub-Branch is to submit a formal notification of completion to ANZAC House by sending an email to support@rslnsw.org.au and is to include:

- (a) The certificate of Incorporation and registered model constitution;
- (b) Copies of the transferred title deeds;
- (c) Copies of the closing balance sheet of the unincorporated association and opening balance sheet of the incorporated entity; and
- (d) Evidence of ACNC registration.

ANZAC House, on behalf of RSL NSW Board of Directors, will provide a letter to the sub-Branch which documents its formal approval of the Incorporation, to support the Amendment of RSL NSW Act 2018 No 48, to be provided to Revenue NSW to exempt the sub-Branch from any duty liability on the transfer of real property.

5. Corporate Member

A CLG is required to have at least one member. The Corporate Member of the incorporated sub-Branch is defined in the Model Constitution. An explanatory note outlining the role of the Corporate Member can be found at Annexure D.

The RSL NSW Board will nominate a representative of the Corporate Member to represent RSL NSW as the sole Corporate Member of the incorporated sub-Branch.

6. Charter

Once Incorporation has been completed, ANZAC House will confirm the transfer of the sub-Branch's Charter to the newly incorporated body.

7. Next Steps

Once the sub-Branch incorporation has been completed and the Charter transferred, the sub-Branch will need to work with its professional advisers to ensure the transfers described in Annexure B are completed. Please note that as every sub-Branch is different, the list provided at Annexure B is for general guidance only and may vary from sub-Branch.

8. Document Control

Associated written directions	RSL NSW Model Constitution		
Related legislation	Corporations Act 2001 (Cth)		
Approved by	Board of Directors	Date 25 August 2022	
Endorsed by	Nicole Hasrouni, CFO	Date 18 August 2022	
Written directions owner	Head of Legal		
Date effective	25 August 2022	Review date	25 August 2023
Publication	5 September 2022		
Version	1.0		
Content enquiries	support@rslnsw.org.au		

Appendix A – Definitions

Advisors	Investment advisors, accountants, and lawyers who can provide professional guidance throughout the process of Incorporation.
Charter	Means a document charter issued by RSL NSW to a sub-Branch which confirms that the sub-Branch is entitled to operate and represent that it is a sub-Branch on the terms set out in the RSL NSW Constitution.
Company Limited by Guarantee (CLG)	A company formed on the principle of having the liability of its members limited to the respective amounts that the members undertake to contribute to the property of the company if it is wound up.
Corporate Member	Each sub-Branch Company has RSL NSW as its Corporate Member, who has all the rights, powers, privileges, and obligations granted to it under the Model Constitution and all relevant laws of the State of New South Wales and the Commonwealth of Australia.
Director	Section 9 of the Corporations Act defines a director as a person appointed to that position.
Incorporation	The company's first registration under the <i>Corporations Act 2001 (Cth)</i> .
Model Constitution	The Constitution that will be adopted by the sub-Branch for the purpose of incorporation, as approved by the RSL NSW Board.
Property	Any legal or equitable estate or interest in real or personal property.
Sub-Branch Executive	The officeholders elected in accordance with clause 15.4 of the RSL NSW Constitution.
Trustees	A Service Member or RSL Custodian Pty Limited, appointed by a sub-Branch in accordance with the RSL NSW Constitution as a trustee of sub-Branch Property,

Annexure A – Checklist for Incorporation

Action	SOP Reference	Responsibility	Action Complete (Y/N)
sub-Branch Executive consider whether it is desirable for the Sub- Branch to incorporate.	N/A	President	
Prepare notices and information required to send to Members for the purpose of considering in principle incorporation approval	4.1	Secretary	
Hold general meeting of the sub-Branch so a resolution can be passed for in principle approval by members that a sub-Branch should incorporate	4.1	Secretary	
Identify lawyer, accountant, valuer and any advisors required to determine sub-Branch assets	4.1	Secretary	
Advise RSL NSW of intention to incorporate and provide information set out in para 3.2 of this SOP	4.2	Secretary	
Conduct due diligence including as to costs, contract and asset transfers and property valuations as appropriate	4.3.1	Sub-Branch Executive and Trustees	
Finalise costs of incorporation	4.3.3	Sub-Branch Executive, Trustees and Advisers	
Preparation of information to be sent to Members for general meeting seeking incorporation approval from Members	4.4	Secretary	
General Meeting of members approving incorporation	4.4	Sub-Branch Executive and Trustees	
RSL NSW Board Approval	4.6	RSL NSW Board	
Incorporation and Registration with ASIC	4.7	Solicitor and Accountant	
Change ACNC Details for the charity to CLG entity		Solicitor	
Confirmation of Corporate Member representative	5	RSL NSW Board	
Charter Transfer Confirmation	6	RSL NSW Board	
Director Election in accordance with CLG Constitution	4.5	Sub-Branch Members	
Complete Property Transfers		Professional Advisors	

Annexure B – Transfers and Assignments

Action	Responsibility	Action
New company to be registered with ASIC	Solicitor/ Accountant	
ACNC Registrations to be amended— transfer to new Company limited by Guarantee	Solicitor/ Accountant	
ATO Registrations for new company limited by guarantee - ABN - GST Concession - FBT Rebate - Income tax exemption	Accountant	
Banking provider to be determined and new accounts set up for new Company Limited by Guarantee.	Treasurer	
Banking — Direct Debits to be reviewed and supplier/bank contacted to update.	Treasurer	
Transfer of investment portfolio (shares/bonds/debentures) to new company	President Treasurer Investment Company	
Transfer Property (if any) to new company and advise tenant/s (if any) of transfer.	Trustees and Solicitor	
Transfer of any contracts to new entity (eg property leases)	Trustees and Solicitor	
Accounting Software to be set up for new company	Treasurer and Accountant	
Invoices and debts of unincorporated association to be settled	Treasurer and Accountant	
Old bank Accounts to be closed	Treasurer and President	
Fundraising – register for a Charitable Fundraising Authority with NSW Fair Trading	Secretary	

Annexure C – Sample Notice of Meeting and Minutes

Sample Notice of Meeting: In-Principal Approval of Members

Notice of Meeting

[NAME] RSL sub-Branch

Date:

Time:

Place:

Agenda

(include normal business items)

1. THAT in accordance with clause 15.26 (a) of the RSL NSW Constitution, [Name] RSL sub-Branch members resolve to provide in principle approval to commence the process of becoming an incorporated RSL sub-Branch as a Company Limited by Guarantee (CLG) under the Corporations Act 2001 (Cth).

Note: include any information and material in support of the proposed resolution

Sample Resolution: In-Principal Approval of Members for inclusion in the Minutes

THAT in accordance with clause 15.26 (a) of the RSL NSW Constitution, [Name] RSL sub-Branch members resolve to provide in principle approval to commence the process of becoming an incorporated RSL sub-Branch as a Company Limited by Guarantee (CLG) under the Corporations Act 2001 (Cth).

Sample Notice of Meeting: Member Approval of Incorporation

Notice of Meeting

[NAME] RSL sub-Branch

Date:

Time:

Place:

Agenda

(include normal business items)

1. THAT in accordance with clauses 15.25 & 15.26 (a) of the RSL NSW Constitution, [Name] RSL sub-Branch members resolve to:
 - (a) Provide approval to cease operating as an unincorporated association and incorporate the sub-Branch as a Company Limited by Guarantee (CLG) under the Corporations Act 2001 (Cth).
 - (b) Request RSL NSW to transfer the sub-Branch Charter to the incorporated sub-Branch

Note: include any information and material in support of the proposed resolution

Sample Resolution: Members Approving Incorporation to be included in the Minutes

THAT in accordance with clauses 15.25 & 15.26 (a) of the RSL NSW Constitution, [Name] RSL sub-Branch members resolve to:

- (a) Provide approval to cease operating as an unincorporated association and incorporate the sub-Branch as a Company Limited by Guarantee (CLG) under the Corporations Act 2001 (Cth).
- (b) Request RSL NSW to transfer the sub-Branch Charter to the incorporated sub-Branch

Annexure D – Explanatory Note – Corporate Member

RSL NSW Members must note that this document does not constitute legal advice for sub-Branches and only provides information for them to consider when assessing their sub-Branch's particular circumstances.

Sub-Branches who choose to incorporate will create a sub-Branch entity which will be a company limited by guarantee. A company limited by guarantee (CLG) is a common structure for not-for-profits and charities. A CLG must have at least three directors, at least one secretary and at least one member.

The definition of the Corporate Member is defined in the model Constitution: The Corporate Member means the member of the sub-Branch Company as required for it to be a company limited by guarantee and is RSL NSW (as defined by the *RSL NSW Act, 2018*)

The name “Corporate Member” was adopted to avoid confusion with RSL NSW individual members. It is merely a name, not a function.

The Corporate Member does not provide RSL NSW (ANZAC House) with any additional powers or control than it has under the RSL NSW Constitution.

The chosen structure of a sub-Branch should not affect the way that RSL NSW members engage with it. Having RSL NSW as the sole Corporate Member ensures that there is no difference between the rights of Members attached to one type of sub-Branch compared to another and the rights of all RSL NSW Members are the same. It also ensures that an RSL sub-Branch which incorporates and becomes a company limited by guarantee remains part of RSL NSW. Afterall, there is only one RSL in NSW.

The Corporate Member's role is limited to the functions detailed in the model Constitution for the CLG. It does not provide RSL NSW (ANZAC House) with any ability to intervene in the decisions made by the sub-Branch, unless such decisions breach the Constitution, which is identical to the current structure of unincorporated associations. Simply, incorporated sub-Branches will continue to operate pursuant to the RSL NSW Constitution and SOPs however, the sub-Branch company will have additional obligations related to the Corporations Act, ASIC, and Directors' duties, not just the responsibilities of office holders under the RSL NSW Constitution.

Why is the sole member of the Company Limited by Guarantee referred to as a Corporate Member?

This is to satisfy company law requirements. It will also help avoid confusion between the RSL NSW Constitution and the Company Limited by Guarantee Model Constitution. It otherwise has no impact on the day-to-day operations of the relevant sub-Branch.

Why does the sub-Branch need to have a Corporate Member?

In order to be incorporated as a company limited by guarantee, the sub-Branch company is required to have at least one member. The sole Corporate Member structure preserves the current relationship between RSL NSW (when defined under the Act), RSL NSW members and sub-Branches.